FOR MYSORE STATE

AGRICULTURE(FOOD PRODUCTION)(195 G) Department.

At. SEKLES.

G.O. No. 170

Dated : the 27th July 1956

[Despatch Abstract.]

SUITS - Writ Petition No.775/54, High Court - Ponnani P.C.C. Society, Malabar - Judgment of the High Court - Amendment of Acts - Examination

GOVERNMENT OF MADRAS
DEPARTMENT OF INDUSTRIES, LABOUR & CO-OPERATION
U.O.Note No.26371 CII/56-7, dated 16th June 1956
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Sub: Suits - Writ Petition No.775/54, High Court Ponnani Producers-cum Consumers' Co-operative Society, Malabar - Copy of the Judgment Communicated:

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The President, Ponnani Producers-cum Consumers' Co-operative Society, Malabar preferred a revision petition to Government under section 57 of the Madras Co-operative Societies Act, 1932 against the award of the arbitrator and the orders of the personal Assistant to the Collector of Malabar in a case of misappropriation of the Society's funds committed by Sri P.P. Raman, Ex-Secretary of the Society. The petition was examined in this Department in consultation with the Collector of Malabar (who was the Registrar for the Producers-cum Consumers' Co-operative Societies) and the Law Department and orders were issued in G.O.Ms.No.2525, Industries, Labour and Co-operation, dated 15th September 1954 setting aside the award of the arbitrator and the orders of the personal Assistant to the Collector of Malabar, directing the arbitrator to hold a fresh enquiry and dispose of the case according to law. Against this order of the Government, the defendant filed a writ petition in the High Court. The High Court has set aside the order passed by the Government on the ground that it has been passed by the Government in consultation with an external authority viz the Collector of Malabar. The Court has held the view that the Government are performing quasi-judicial functions when they are passing an order under Section 57 of the Madras Co-operative Societies Act, 1932, and that no quasi-judicial ~~functions when they are passing an order~~ opinions of any external authority (e.g., the Collector of Malabar in the instant case) unless the statute makes provision therefor. As the Government have been advised that an appeal in this case will not be successful, it is proposed to consider the question of amending the Madras Co-operative Societies Act suitably making provision for consultation with the subordinate officers.

Authority can take into consideration the

2. As the observation in the High Court Judgment will affect the procedure followed in the matter of consultation with subordinate authorities while performing quasi-judicial function by the Government in respect of other acts also, which provide for statutory appeal to or revision by Government, the question whether these acts should also be amended may have to be considered in the light of the High Court Judgment referred to. (Copy enclosed) All Departments of the Secretariat and other sections in Industries, Labour and Co-operation Department may be requested to take necessary action in the matter with reference to the Acts with which they are concerned.

T.V. KRISHNAN KUTTI WARRIER,
Assistant Secretary to Government.

To
All Sections in this Department.
All Departments of the Secretariat.(with enclosures)

/True copy/

R.T.O.

In the High Court of Judicature at Madras.
Special Original Jurisdiction.
Wednesday the seventh day of March.
One thousand nine hundred and fifty six.
present:-
The Honourable Mr.Justice Rajagopala Ayyangar
Writ Petition No.775 of 1954.

P.P. Raman Memon. ... Petitioner.

1. The State of Madras represented by the Secretary to Government.Department of Industries,Labour and Co-operation.

2. The President, Producers-cum-Consumers Co-operative Society Ltd., Ponnani,

3. M.M. Kesava Memon. ... Respondents.

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith the High Court will be pleased to issue a writ of certiorari to the first respondent Government to call for the records of the proceedings in and quash the order G.O.Ms.No.2525 dated 15th September 1954 under section 57 of the Madras Co-operative Societies Act (Act VI of 1932) in the matter of Reference to Arbitration No.15 of 1951 before the Assistant Taluk Supply Officer, Ponnani(Arbitrator) and A.R.2/8302/52 before the Registrar of P.C.C. Societies, Malabar.

This petition coming on for hearing, upon perusing the petition and the affidavit filed in support thereof and the counter affidavit filed on behalf of the 1st Respondent and upon hearing the arguments of Messrs.N.Sundara Ayyar, V.R. Venkatakrishnan and M.Sethumadhavan, Advocates for the petitioner and of the Special Government Pleader on behalf of the 1st respondent and of Mr.M.K. Nambiar, Advocate for respondent 2 and respondent 3 not appearing in person or by Advocate, the court made the following:-

ORDER:

1. This is a petition for the issue of a writ of certiorari, to quash an order passed by the State of Madras, in its Department of Industries, Labour and Co-operation. The Order was passed under Section 57 of the Madras Co-operative Societies Act, in these circumstances.

2. The petitioner was the Secretary of a producer-cum-consumer Co-operative society in Ponnani, Malabar District. He occupied this post on various dates from 26th August 1946 to 28th December 1948. During this period, he was stated to have been guilty of misappropriation of some amounts belonging to the Society by using forged and irregular vouchers, in conspiracy with an accounts clerk of the same society. On the basis of these allegations, an application was made by the President of the Society to the Registrar, for arbitration under Section 51 of the Co-operative Societies Act. The amount claimed by the society as having been lost to it by this misappropriation, was a sum of Rs.4,567-2-7. In proof of and as evidence of this misappropriation, the society filed before the arbitrator 82 vouchers whose authenticity, as well as propriety were disputed by the society. The arbitrator went into the dispute, and by his award, held that 74 of these vouchers related to a period beyond 2 years covered by the proviso to Rule15(1) of the Rules made under the Co-operative Societies Act, which prescribes a period of 2 years for a claim by the society against

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a past officer or servant. In regard to the other 8 of the voucher the arbitrator held that the society might prefer a separate claim in regard thereto, and seek a separate reference.

3. The Society took the matter in an appeal to the Collector who was the District Registrar under section 51 of the Act. The Collector by his order dated 19th March 1953, dismissed this appeal. The society thereupon filed before the Government, a revision under section 57 of the Act, and this is the order which has been passed in this revision petition; which is the subject-matter of this writ petition. By this order, now impugned, which was passed on 15th September 1954 the Government have held that the period of limitation applicable for the claims made by the society against the petitioner, was not 2 years as he contended, but that a fraud had been committed, by him which was not within the knowledge of the society, and which, it stated, enlarged the period of limitation by the application of the principle contained in Section 18 of the Limitation Act. On this ground, the Government held that the entire claim was within time. As a result of this finding it set aside the order of the arbitrator and Registrar, and remanded the reference to the arbitrator, to be disposed of in accordance with law.

4. It is the validity and legality of this order that is challenged in this writ petition. Mr. Sundara Iyer, learned counsel for the petitioner, has urged before me various grounds. But as I find that one of the grounds taken by him is well-founded, I do not think it necessary to even set out the other grounds urged.

5. The order now impugned starts its preamble by stating that the order was passed after considering(1) the petition from the president of the Ponnani Producers-cum-consumers' Society dated 25th May 1953, i.e., the revision petition to Government by the Society; and (2) from the Collector of Malabar Ar.2/6065/53 CS dated 1st August 1953. The Collector here referred to was the appellate authority who had disposed of the appeal by the society from the orders of the arbitrator. It is therefore clear, to start with, that the Government had referred the matter to the Collector, and had considered some communication from him before passing the order which they passed. This matter is made more than clear by a subsequent passage in the same order where, before starting the operative part of it, Government say,

> "The Government have examined the contentions of the Petitioner, in consultation with the Collector of Malabar and in the light of the explanation of the respondents, and pass the following orders."

It is therefore proved beyond doubt that the order which they have passed under Section 57, they did after consultation with the Collector. He was certainly an external authority, who should not have been consulted before the Government exercised their statutory powers under Section 57. Under this provision they are performing quasi-judicial function, and no quasi-judicial authority can take into consideration the opinions of any external authority, unless the statute makes provision therefor. If therefore, the order of the Government had been passed after taking into account a communication from the collector, and as the order itself say, "in consultation with the Collector," the order cannot stand. In this view, which I have taken of the legality of this order, it is not necessary as I have said before, to deal with the other contentions raised regarding the validity of this order.

6. As the order was one passed not strictly in terms of Section 57 of the Co-operative Societies Act, this order has to be quashed. The rule is therefore made absolute, and the order of Government dated 15th September 1954, G.O.Ms.No.2525 is set aside.

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aside. The Government will consider the matter strictly in accordance with the terms of Section 57 of the Act. The 1st respondent will pay the petitioner's costs. Counsel's fee Rs.100/-

(Sd)B. Narayanaswami Iyer,
Assistant Registrar, Appelate Side.

/True copy/

Sd. S. Jagadisayyar.
23-4-56.
Sub- Assistant Registrar, A.S.,

To
1. The Secretary to Government, Department of Industries, Labour and Co-operation(with records if any) (and Writ absolute).

2. The Registrar, Producers-cum Consumers' Co-operative Societies, Malabar at Kozhikode.

3. The Assistant Taluk Supply Officer and Arbitrator, Ponnani(with writ absolute).

4. 2 Carbon copies to the Special Government Pleader and one copy of writ absolute.

/True copy/

26/9/52
SUPERINTENDENT.

P.P./~~20/9~~x 19/9.

20/9/52 20/9

C.No.29609 F.B.VI.A-56 Agri(F.P.)

Subl- Suits - Writ petition No.775/54, High Court - Ponnani P.C.C. Society, Malabar - Judgment of the High Court - Amendment of Acts - Examination.

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Ref: From the Industries,Labour and Cooperation Department U.O.Note No.26371 CII/56-7 dated 16-6-1956

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Please see the above U.O. note and its enclosure in the cf.

2. The High Court of Madras has set aside the order passed by the State Government in a case coming under section 57 of the Madras Co-operative Societies Act,1932 on the gound that it has been passed by the Government in consultation with an external authority namely the Collector of Malabar, that the Government are performing quasi-judicial functions when they are passing an order under Section 57 of the Madras Cooperative Societies Act, 1932 and that no quasi-judicial authority can take into consideration the opinions of any external authority (e.g. the collector of Malabar in the instant case) unless the statute makes provision therefor. It is seen from the copy of the judgment of the High Court that the case was first disposed of by the Registrar, as arbitrator, under section 51 of the Cooperative Societies Act. The Society took the matter in an appeal to the Collector who was the District Registrar, under Section 51 of the Act. The collector dismissed this appeal. The Society thereupon filed a revision petition before the ~~xxx~~Government(under Section 57 of the Act) which is the subject matter of the judgment of the High Court referred to above The Industries,Labour and Cooperation Department have stated that as the Government have been advised that an appeal in this case will not be successful, it is proposed to consider the question of amending the Madras Cooperativ Societies Act suitably, making provision for consultation with the subordinate officers. The Industries,Labour and Cooperation Department have also called upon the other

Departments of the Secretariat to examine the question whether the Acts with which they are concerned should be amended in the light of the judgment of the High Court referred to above.

3. Section 57 of the Madras Co-operative Societies Act 1932, reads as follows:-

'Power of Government and Registrar to call for proceedings and to pass orders.

57. The (State) Government or the Registrar may call for, examine the record of any enquiry or the proceedings of any officer subordinate to them for the purpose of satisfying themselves as to the legality or propriety of any decision or order passed and as to the regularity of the proceedings of such officer. If, in any case, it shall appear to the (State) Government or the Registrar that any decision or order or proceedings so called for should be modified, annulled or reversed, the (State)Government or the Registrar, as the case may be, may pass such order thereon as to it or him may seem fit."

Thus Section 57 of the Act referred to above outlines the function of the State Government in specific terms. The High Court has held that the State Government are performing quasi-judicial functions when they are passing an order under Sec.57 of the Act. In the circumstances, the preliminary point for consideration seems to be whether only such Acts which lay down the powers of the State Government in specific terms as(Sec.57 of, the Co-operative Societies Act quoted above (under which the State Government are said to be exercising quasi-judicial functions) or all Acts which provide for the State Government to cancel or modify the orders of the subordinate authorities as for example the Madras Land Utilisation Order 1953(Clause 4) should be amended in the light of the judgment of the High Court in question. The ~~Land~~ Law Department may be requested to offer their remarks on this question.

p.t.o.

Agriculture may also see in the first instance as they are concerned with a similar order in the M.R.M.L.O.

Only Acts under certain provisions of which, the authorities concerned, sit as a court, summon witnesses and parties, take down evidence and pass judgments or proceedings, need be considered.

In disposing of cases under Sections 11,12,14,15, 17 etc of the rule Abolition Act the A.S.O., S.O. and the D.O.S as the case may be, sit as a court and pass orders. Under these sections, the officers concerned exercise quasi-judicial functions'. While passing awards, the L.A. Officer, issues notices to the parties, records evidence, receives or gets the connected documents filed yet, he has before him the report of the Tahsildar or the Deputy Tahsildar, in regard to valuation etc. In this case, it seems necessary to ~~exceed~~ amend the section, allowing the L.A. Officer, consult his subordinate regarding valuation etc.

Under Land Utilisation Order 1955, there seems to be no exercise of such quasi-judicial functions, by any officer.

Agriculture and Law May see for remarks.

Id.P.S.
By.Secy.(E.O.)
10-7-56
Id.K.V.K.
A.A.S.
10-7-56

Agri(F.P.)U.O.No.29609
F.P.VI.A/56 dt.11-7-56

Agri(A.II)

Please see the notes of Agriculture(F.P.) Departments from P.1. above.

2. so far as the M.R.M.L. Order, 55, is concerned, relevant extracts from this file may be taken for separate action.

3. As the question raised by Agri(F.P.) has to be answere by Law Departments only, no remarks seem called for in this department.

4. The file may be passed on to Law Departments after ~~marking~~taking extracts.

Id.
13-7-56

Id.
D.S.(D.O.)

Law Department

This Department agrees with Agri.(E.P.) that there is no need to amend clause 4 of the M.L.U.Order, 1955, with reference to paragraph 2 of the U.O. Note of the I.L.C. Department at p. 1. c.f.

Id.
A.D.S.
17-7-56

The notes of Agriculture and Law from the bottom of P.5 ante may be perused. In view of the opinion expressed by Law no further action is necessary in this file. The papers may be recorded as a G.O.Rt. Circulation does not appear necessary.

Id.K.V.K. Id. P.S. Id. M.V.S.
A.D.S. D.S.(E.O. S.(E.O.)
24-7-56

G.O.Rt.170 dated 27-7-56

/True copy/

SUPERINTENDENT 26/9/56

P.P./19/9

27/9/56 Rue 28/9/56.